ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

In the Matter of the Unlicensed Activity of:

No. 10F-BD048-BNK

THE GUARDIAN GROUP LLC, AKA THE GUARDIAN GROUP FUND, AKA GUARDIAN GROUP N.A. AND LUIS BELEVAN AND BRYAN PREHODA

NOTICE OF HEARING

7150 East Camelback Road, Suite 444 Scottsdale, Arizona 85251

Petitioners.

PLEASE TAKE NOTICE that, pursuant to the Arizona Revised Statutes ("A.R.S.") §§ 6-137, 6-138 and 41-1092.02, the above-captioned matter will be heard through the Office of Administrative Hearings, an independent agency, and is scheduled for October 18, 2010 at 8:00 a.m., at the Office of Administrative Hearings, 1400 West Washington, Suite 101, Phoenix, Arizona, (602) 542-9826 (the "Hearing").

The purpose of the Hearing is to determine if grounds exist for: (1) the issuance of an order pursuant to A.R.S. § 6-137 directing Petitioners to cease and desist from the violative conduct and to take the appropriate affirmative actions, within a reasonable period of time prescribed by the Superintendent, to correct the conditions resulting from the unlawful acts, practices, and transactions, (2) the imposition of a civil monetary penalty pursuant to A.R.S. § 6-132; (3) the suspension or revocation of Petitioners' license pursuant to A.R.S. § 6-905; (4) an order to pay restitution of any fees earned on loans made in violation of A.R.S. § 6-901, et seq., pursuant to A.R.S. §§ 6-131(A)(3) and 6-137; and (5) an order or any other remedy necessary or proper for the enforcement of statutes and rules regulating mortgage brokers pursuant to A.R.S. §§ 6-123 and 6-131.

Pursuant to A.R.S. § 6-138, the Superintendent of Financial Institutions for the State of Arizona (the "Superintendent") delegates the authority vested in the Superintendent, whether implied or expressed, to the Director of the Office of Administrative Hearings or the Director's designee to preside over the Hearing as the Administrative Law Judge, to make written recommendations to the Superintendent consisting of proposed Findings of Fact, Conclusions of Law and Order. The Office of Administrative Hearings has designated Lewis Kowal, at the address and phone number listed above, as

the Administrative Law Judge for these proceedings. Pursuant to Arizona Administrative Code ("A.A.C.") Rule 2-19-104 and A.R.S. §§ 41-1092.01(H)(1) and 41-1092.08, the Superintendent retains authority to enter orders granting a stay, orders on motions for rehearing, final decisions pursuant to A.R.S. § 41-1092.08 or other order or process which the Administrative Law Judge is specifically prohibited from entering.

Motions to continue this matter shall be made in writing to the Administrative Law Judge **not** less than fifteen (15) days prior to the date set for the Hearing. A copy of any motion to continue shall be mailed or hand-delivered to the opposing party on the same date of filing with the Office of Administrative Hearings.

A.R.S. § 41-1092.07 entitles any person affected by this Hearing to appear in person and by counsel, or to proceed without counsel during the giving of all evidence, to have a reasonable opportunity to inspect all documentary evidence, to cross-examine witnesses, to present evidence and witnesses in support of his/her interests, and to have subpoenas issued by the Administrative Law Judge to compel attendance of witnesses and production of evidence. Pursuant to A.R.S. § 41-1092.07(B), any person may appear on his or her own behalf or by counsel.

Pursuant to A.R.S. § 41-1092.07(E), a clear and accurate record of the proceedings will be made by a court reporter or by electronic means. Any party that requests a transcript of the proceedings shall pay the cost of the transcript for the court reporter or other transcriber.

Questions concerning issues raised in this Notice of Hearing should be directed to Assistant Attorney General Erin O. Gallagher, (602) 542-8935, 1275 West Washington, Phoenix, Arizona 85007.

NOTICE OF APPLICABLE RULES

On February 7, 1978, the Arizona Department of Financial Institutions (the "Department") adopted A.A.C. R20-4-1201 through R20-4-1220, which were amended September 12, 2001, setting forth the rules of practice and procedure applicable in contested cases and appealable agency actions before the Superintendent. The Hearing will be conducted pursuant to these rules and the rules

governing procedures before the Office of Administrative Hearings, A.A.C. R2-19-101 through R2-19-122. A copy of these rules is enclosed.

Pursuant to A.A.C. R20-4-1209, Petitioners shall file a written answer within twenty (20) days after issuance of this Notice of Hearing. The answer shall briefly state the Petitioners' position or defense and shall specifically admit or deny each of the assertions contained in this Notice of Hearing. If the answering Petitioners are without or are unable to reasonably obtain knowledge or information sufficient to form a belief as to the truth of an assertion, Petitioners shall so state, which shall have the effect of a denial. Any assertion not denied is deemed admitted. When Petitioners intend to deny only a part or qualification of an assertion, or to qualify an assertion, Petitioners shall expressly admit so much of it as is true and shall deny the remainder. Any defense not raised in the answer is deemed waived.

If a timely answer is not filed, pursuant to A.A.C. R20-4-1209(D), Petitioners will be deemed in default and the Superintendent may deem the allegations in this Notice of Hearing as true and admitted and the Superintendent may take whatever action is appropriate, including suspension, revocation, denial of Petitioners' license or affirming an order to Cease and Desist and imposition of a civil penalty or restitution to any injured party.

Petitioners' answer shall be mailed or delivered to the Arizona Department of Financial Institutions, 2910 North 44th Street, Suite 310, Phoenix, Arizona 85018, with a copy mailed or delivered to the Office of Administrative Hearings, 1400 West Washington, Suite 101, Phoenix, Arizona 85007 and to Assistant Attorney General Erin O. Gallagher, Consumer Protection & Advocacy Section, Attorney General's Office, 1275 West Washington, Phoenix, Arizona 85007.

Persons with disabilities may request reasonable accommodations such as interpreters, alternative format or assistance with physical accessibility. Requests for accommodations must be made as early as possible to allow time to arrange the accommodations. If accommodations are required, call the Office of Administrative Hearings at (602) 542-9826.

COMPLAINT

- 1. Petitioner The Guardian Group LLC, aka The Guardian Group Fund, aka Guardian Group N.A. ("Guardian") is an Arizona limited liability company that is not and was not, at any time material herein, authorized to transact business in Arizona as a mortgage broker within the meaning of A.R.S. §§ 6-901, et seq. The nature of Guardian's business is that of a mortgage broker, within the meaning of A.R.S. § 6-901(11) and A.A.C. R20-4-102.
- 2. Petitioner Luis Belevan ("Mr. Belevan") is a Member of Guardian and is not and was not, at any time material herein, authorized to transact business in Arizona as a mortgage broker within the meaning of A.R.S. § 6-903, et seq.
- 3. Petitioner Bryan Prehoda ("Mr. Prehoda") is the Chief Financial Officer ("CFO") of Guardian and is not and was not, at any time material herein, authorized to transact business in Arizona as a mortgage broker within the meaning of A.R.S. § 6-903, et seq.
- 4. Guardian, Mr. Belevan and Mr. Prehoda are not exempt from licensure as mortgage brokers within the meaning of A.R.S. § 6-902.
- 5. On October 29, 2009, the Department received an e-mail informing the Department that Guardian was advertising mortgage loan services, but was not licensed by the Department as a mortgage broker or mortgage banker.
- 6. On January 21, 2010, the Department sent a letter to Guardian, stating that the Department had reason to believe that Guardian may be operating in Arizona without the benefit of a mortgage broker or mortgage banker license, and gave Guardian an opportunity to respond by February 1, 2010.
- 7. The Department received a response from Guardian dated February 2, 2010 that stated Guardian did not require any license from the Department.
- 8. Guardian's website, www.guardiangroupfund.com, was still active as of May 4, 2010 and advertises Guardian's "Principal Reduction Program." Guardian claims their Principal Reduction

Program will assist homeowners in obtaining a new mortgage with a reduction of the principal amount of the note to ninety percent (90%) of the current market value.

- 9. Guardian's website further states in its "Principal Reduction vs. Loan Modification" section that Guardian "will refinance" homeowners' current notes.
- 10. On February 10, 2010, the Department received a second e-mail from an agent for Guardian, including a number of attachments. The attachments are documents that Guardian provides to its agents and include the following:
 - a. A copy of Frequently Asked Questions ("FAQ"), which state the following:
 - i. The fees associated with Guardian's program include a one thousand, five hundred ninety five dollar (\$1,595.00) non-refundable application fee payable to Guardian;
 - ii. Guardian brokers the borrower a new loan; and
 - iii. The "new servicer" buys the borrower's note from the lender, which indicates Guardian will service the new mortgage loans;
 - b. A copy of a Referral Agreement Guardian uses for its agents, which states, "IF Referring Agent advises client NOT to pay The Guardian Group LLC, [Guardian] will fine the Agent \$5,000.00 plus any additional costs that may occur from the collection of the debt for damages and liabilities; and
 - c. A copy of Consulting and Processing Fee Agreement (Note), whereby the borrower agrees to engage Guardian as a "consultant" regarding the "current or prospective mortgage" of the borrower's property and pay Guardian \$1,595.00 "as compensation for services performed."
- 11. Guardian also brokered a mortgage loan for borrower A.R. A.R.'s Note states that the lender is "The Guardian Group, LLC" and that all payments pursuant to the note are payable to Guardian.

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b.

- 12. A Settlement Statement for A.R.'s mortgage loan shows that Guardian collected the "Consulting and Processing Fee" of one thousand, five hundred ninety five dollars (\$1,595.00).
 - 13. Four (4) consumer complaints were also referred to the Department, as follows:
 - a. In a complaint dated February 10, 2010, the complainant stated that she signed documents for Guardian to refinance her home on October 25, 2009. The complainant further stated that she was advised the "entire process was no longer than 90 days";
 - In a complaint dated February 16, 2010, the complainant stated that she paid Guardian the one thousand, five hundred ninety five dollars with her application on December 10, 2009 in order to stop the sale of her home. The complainant stated that Guardian informed her that if she "did not qualify they would not cash the check" and return it to the complainant. The complainant further stated that the check was cashed on December 14, 2009, and that she followed up with Guardian weekly and was told that Guardian "had everything...taken care of" and "were working with Wells Fargo." The complainant also called Wells Fargo every week and was informed each time that her home would still be sold on January 12, 2010. According to the complainant, her house was sold on January 12, 2010, and Wells Fargo claimed that no one besides herself had ever contacted them regarding her home. The complainant further stated that she was told on three different occasions that Guardian had mailed her refund, but every time she spoke to a different person who had no idea of what events had previously transpired;
 - c. In a complaint dated March 11, 2010, the complainant stated he was referred to Guardian by R.H. The complainant claimed he provided requested documentation and "signed up" for Guardian's Principal Reduction Program on or about October 23, 2009 and was told that he would be informed of his pre-

qualification within forty eight (48) hours. The complainant stated he never received any further information from Guardian regarding his pre-qualification or the process, that they continually referred him back to R.H., who would inform him that it was "in process." According to the complainant, R.H. eventually advised him to get his money back because "they are fraud." The complainant did state that he received a partial refund from Guardian; and

- d. In a complaint dated March 24, 2010, the complainant stated C.R. promised the complainant that she could get a loan refinance with Guardian. The complainant stated that the transactions where she paid seven hundred fifty dollars (\$750.00) and six hundred ninety five dollars (\$695.00) transpired over a year prior to the complaint, and she had been told the whole process should take sixty (60) to ninety (90) days.
- 14. Guardian collected applications for their Principal Reduction Program from approximately two thousand, five hundred (2,500) consumers; however only five (5) consumers actually received new loans.
- 15. Guardian's principles, including Mr. Belevan and Mr. Prehoda, collected compensation for their unlicensed activity, including the refinances of five (5) mortgage loans.
- 16. Based on the above findings, on May 5, 2010, the Department issued and served upon Petitioners an Order to Cease and Desist; Notice of Opportunity for Hearing; Consent to Entry of Order ("Order to Cease and Desist").
- 17. On June 3, 2010, the Department received Petitioners' request for a hearing to appeal the Order to Cease and Desist.

LAW

1. Pursuant to A.R.S. §§ 6-901, et seq., the Superintendent has the authority and duty to regulate all persons engaged in the mortgage broker business and with the enforcement of statutes, rules and regulations relating to mortgage brokers.

- 2. By the conduct set forth in the Complaint, The Guardian Group, LLC and Mr. Belevan and Mr. Prehoda have violated the following:
 - a. A.R.S. § 6-903(A), by acting as a mortgage broker in Arizona without having first applied for and obtained a mortgage broker license from the Superintendent;
 - b. A.R.S. § 6-909(B), by receiving compensation in connection with arranging for or negotiating a mortgage loan when not licensed pursuant to this article; and
 - c. A.R.S. § 6-909(C), by knowingly advertising, displaying, distributing, broadcasting or televising or causing or permitting to be advertised, displayed, distributed, broadcast or televised false, misleading or deceptive statements or representations with regard to the rates, terms or conditions of a mortgage loan.
- 3. The violations set forth above constitute grounds for: (1) the issuance of an order pursuant to A.R.S. § 6-137 directing Petitioners to cease and desist from the violative conduct and to take the appropriate affirmative actions, within a reasonable period of time prescribed by the Superintendent, to correct the conditions resulting from the unlawful acts, practices, and transactions; (2) the imposition of a civil monetary penalty pursuant to A.R.S. § 6-132; (3) an order to pay restitution of any fees earned on loans made in violation of A.R.S. §§ 6-901, et seq., pursuant to A.R.S. §§ 6-131(A)(3) and 6-137; and (4) an order or any other remedy necessary or proper for the enforcement of statutes and rules regulating mortgage brokers pursuant to A.R.S. §§ 6-123 and 6-131.
- 4. Pursuant to A.R.S. § 6-132, Petitioners' violations of the aforementioned statutes are grounds for a civil penalty of not more than five thousand dollars (\$5,000.00) for each violation for each day.

WHEREFORE, if after a hearing, the Superintendent makes a finding of one or more of the above-described violations, the Superintendent may order Petitioners to cease and desist from the violative conduct and take the appropriate affirmative actions pursuant to A.R.S. § 6-137; impose a civil money penalty pursuant to A.R.S. § 6-132; suspend or revoke Petitioners' license pursuant to A.R.S. § 6-905; order payment of restitution of any fees earned in violation of A.R.S. §§ 6-901, et seq., pursuant

1	to A.R.S. §§ 6-131(A)(3) and 6-137; and order any other remedy necessary or proper for the
2	enforcement of statutes and rules regulating mortgage bankers pursuant to A.R.S. §§ 6-123 and 6-131.
3	SO ORDERED this 2 nd day of July, 2010.
4	Lauren W. Kingry
5	Superintendent of Financial Institutions
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8	Robert D. Charlton Assistant Superintendent of Financial Institutions
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13	ORIGINAL of the foregoing filed
14	ORIGINAL of the foregoing filed this 2 nd day of July, 2010. with:
15	Lauren Kingry Superintendent of Financial Institutions
16	Arizona Department of Financial Institutions Attention: Susan Longo
17	2910 North 44th Street, Suite 310 Phoenix, AZ 85018
18	COPY of the foregoing mailed or
19	hand-delivered this 2 nd day of July, 2010. to:
	Lewis Kowal, Administrative Law Judge Office of Administrative Hearings
20	1400 West Washington Street, Suite 101
21	Phoenix, AZ 85007
22	Erin O. Gallagher, Assistant Attorney General Office of the Attorney General
23	1275 West Washington Street Phoenix, AZ 85007
24	Robert Charlton, Assistant Superintendent
25	Richard Fergus, Licensing Division Manager Arizona Department of Financial Institutions
26	2910 North 44th Street, Suite 310 Phoenix, AZ 85018

COPY of the foregoing mailed Certified, Return Receipt this 2nd day of July, 2010. to:

Mark D. Chester, Esq.
Chester & Shein, P.C.
8777 N. Gainey Center Dr., Ste. 191
Scottsdale, AZ 85258
Attorneys for Petitioners